

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on March 26, 2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Senate Bill 507, 3/21/2001;
Senate Bill 511, 3/21/2001;
Senate Bill 513, 3/22/2001;
Senate Bill 514, 3/23/2001;
Senate Bill 516, 3/23/2001

Executive Action: Senate Bill 511 Pass 5-4;
Senate Bill 507 Pass 7-2;
Senate Bill 513 appoint
subcommittee

Presentation: Terry Johnson with the Legislative
Fiscal Division

HEARING ON SENATE BILL 514

Sponsor: SENATOR LORENTS GROSFIELD, Big Timber

Proponents: Don Hoffman, Department of Revenue; Loren Solberg, President of Montana Land Title Association; Rita Gowan, Helena Abstract and Title

Opponents: None

Opening Statement by Sponsor: SENATOR GROSFIELD presented the bill. The bill addressed the sales of real estate to non-resident land owners. He described the issue of a non-resident land owner who might buy a ranch and a few years later sell it at a significant profit. There are income taxes due but the Department of Revenue does not get notified. The bill would make sure the Department of Revenue would know of the sale. This would ask closing agents to report some of the transaction. Closing agents would include title companies, attorneys or mortgage companies. The closing agents are required to report to the Internal Revenue Service with a 1099. The state has access to the IRS 1099 reports electronically. There is a question of whether the Department of Revenue would ever know that a transaction took place in Montana. He pointed out a glitch to the committee. A lot of these transactions are done with either a corporation or a LLC. Corporations or LLC's are not required to file the 1099 form with the IRS, therefore they would not be required to file anything under this bill. Title agents have costs associated with reporting and it does not seem fair. However, the bill would allow examination of these transactions to see whether or not the state of Montana is missing out on a significant amount of tax revenue. **{Tape : 1; Side : A; Approx. Time Counter : 0 - 7}**

Proponents' Testimony: Don Hoffman, representing the Department of Revenue, spoke in favor of the bill. He said the department currently received information on the 1099 S's and this bill would appear to close the gap by requiring that the closing agents would provide information in the same manner as they provide to the Internal Revenue Service. This bill would also provide some teeth in the law with a penalty if they do not provide the information.

Loren Solberg, President of the Montana Land Title Association, spoke for the bill. He pointed out the burden of the bill was in the enforcement and penalties on the industry. However, they have a reporting requirement now with the IRS. He said as long as this was placed in an identical format he would not be opposed.

Rita Gowan, representing Helena Abstract and Title, said their company does annual reports now and this would not be a problem for them.

Opponents' Testimony: None

Questions from Committee Members and Responses: SENATOR ELLIS asked how corporations and LLC's would be handled. SENATOR GROSFIELD replied the IRS had adequate information off of other forms that they file. Mr. Hoffman from the department described the variety of 1099's that were filed under different circumstances. There were 1099's for interest and miscellaneous interest. The bill addressed the 1099 S specifically for real estate transactions. {Tape : 1; Side : A; Approx. Time Counter : 11.3 - 15}

SENATOR ELLINGSON asked how an out of state transaction would be handled. Mr. Heiman replied they would be identified through their Montana income tax returns.

SENATOR STONINGTON asked how compliance by a non-resident would be enforced. SENATOR GROSFIELD replied the bill would try to get at the problem for the next two years and find the money that is involved. {Tape : 1; Side : A; Approx. Time Counter : 15 - 25.1}

Closing by Sponsor: SENATOR GROSFIELD closed. Out of state buyers are can be unaware that they need to file a Montana income tax return. This bill will get at the problem. {Tape : 1; Side : A; Approx. Time Counter : 25.1 - 28}

HEARING ON SENATE BILL 516

Sponsor: SENATOR LORENTS GROSFIELD, Big Timber

Proponents: Mary Whittinghill, Montana Taxpayer's Association

Opponents: John Blomquist, Montana Stockgrower's Association

Opening Statement by Sponsor: SENATOR GROSFIELD presented the bill. He said the bill dealt with the property taxation of rural lands in Montana. It attempts to adjust some of the taxation especially with respect to agricultural lands. Under current law, anything over 160 acres is automatically agricultural and is taxed at its productive capacity. However, in our modern economy, rural land is now being purchased by non-resident land owners and is not being used for agriculture. Some buyers are purchasing large ranches for their "American Dream" and taking

the land off of agricultural production. Taking the cows off the place, they may not need machinery, would not be raising hay, would not hire irrigators, would not need parts from town and would not buy bulk fuel anymore. This has a significant effect on the economy. As a result of all that, does the county lower its budget? The surrounding land owners are making up the difference of all of that loss of taxable value. The rest of the people in the area are subsidizing the lifestyle of the "rich and famous" or the non-resident. **{Tape : 1; Side : A; Approx. Time Counter : 28 - 31.1}**

SENATOR GROSFIELD described past legislation that tried to get at this problem. He said the bill redefines rural agriculture land, the 20-160 acres. If you can demonstrate \$1,500 dollars of agriculture related income then you can be taxed at ag value. This says for land that is over 160 acres, you start with \$2,060 and then there is a factor of \$8 for each acre after that. For a ten thousand acre ranch you would need to show something like \$12,000 worth of ag income in a year. The bill leaves farmsteads alone, which are class 4. There is a new class of land, class 14, which is where the non-ag land goes. The rural residential land is taxed at 1/4 class 4 rate. This one fourth was just picked out of the sky, just like seven times grazing was in HB 643. The reason for this choice is it is an incentive to keep land in agricultural production, even if just grazing. This keeps some agriculture going in order to keep the local economy going. He noted the department suggested there may not be a need for annual reporting. Biannual reporting might be just as good, however, if it were only reported once and never again it would not work since use of land can change. He pointed out page 28 regarding the department coming up with certification rules. These have to be simple and easy to comply with, for both the department and the taxpayer. He described an example of a 19 acre, river front parcel, adjacent to a 21 acre river front parcel - both undeveloped and basically the same. The 19 acre parcel in 1993 was taxed at \$405. The adjacent parcel was taxed at \$7.05. HB 643, at seven times the rate, was \$49. This does not make sense that other taxpayers are subsidizing the difference. That is what this bill would address. **{Tape : 1; Side : B; Approx. Time Counter : 1 - 11.4}**

Proponents' Testimony: **Mary Whittinghill**, representing Montana Taxpayer's Association, spoke in favor of the bill. She said there was a need for more clarification in this area of law. Non-qualified ag and their comparisons do need review.

Opponents' Testimony: **John Blomquist**, representing Montana Stockgrower's Association, spoke against the bill. He said the bill had some problems. They recognized the issue that was

trying to be addressed of looking at ag land and what thresholds to apply to that land to be taxed as agricultural land. He pointed out a couple of concerns. The first concern is in section 6, pages 26-27. This establishes thresholds of 20-160 acres with a \$1,500 threshold plus \$4 an acre. When you get over 160 acres it is \$2,000 an acre plus \$8 an acre. The problem is this is not appropriate for truly agricultural land. For example if you had 2,000 acres of grazing land, you may not get around to once every three or four years. Some of this is marginal ground, used for ag purposes, but not used often. One year the owner may qualify for the income test and other years that piece of ground may not generate any income. This is not addressed. This needs to be studied when establishing income thresholds to classify lands for agricultural taxation. He said he understood the concern of somebody buying a big ranch and taking the cows off and not producing anything. It is still being taxed at ag value, based on productivity, but there is no productivity going on. By establishing thresholds and establishing the appropriate reporting, it should not take truly agricultural land and change the taxation dramatically. **{Tape : 1; Side : B; Approx. Time Counter : 11.4 - 17.4}**

Questions from Committee Members and Responses: SENATOR ELLIS

questioned the thresholds. He described a place he owned in Yellowstone County that cost \$55 an acre. If this was capitalized at current mortgage rates of about 7%, and you have mortgage on it, even with taxes it amounts to less than \$8 an acre. That land was once given back to the state because the land wasn't worth the taxes on it. However, there were small parcels held by different individuals. A lot of that land is now in trust. Now there are internal lessors that lease this land. Most of that land is being rented for \$2 an acre, which doesn't even pay for the state lands. None of those lands would qualify for agricultural under the \$8 test. He suggested this issue be studied in a subcommittee.

SENATOR GROSFIELD discussed how the gross income on a ten thousand acre ranch would work out. He pointed out the non-contiguous parcels were covered in the bill on page 27, line 4 of the bill. He noted there was land that was not used for a four year period. One of the qualifications may need to be one in four or five years. He felt if \$8 was too high it could be lowered. When the \$1,500 dollars was originally adopted there was a lot of discussion about what that number should be. Most felt that number was conservative. He was not sure what the right number should be but the point was too not hit anybody that is bonafide in agriculture. **{Tape : 1; Side : B; Approx. Time Counter : 17.4 - 21.6}**

SENATOR ELLIS said the \$8 an acre was easy to obtain. However, as far as the renters, who totally enclosed the property, they cannot meet that threshold. There needs to be some provision to deal with that kind of property. There are other properties that have these individual leases that are either owned by individuals or more often trusts, because they pass through one generation to the next. **SENATOR GROSFIELD** agreed there was some site specific examples that had to be considered. The intention was not to hurt agriculture. This bill is aimed at a bigger problem. He suggested some language could be added to address the exceptions, such as production failure. *{Tape : 1; Side : B; Approx. Time Counter : 21.6 - 24}*

SENATOR COLE pointed out that Eastern Montana land would not meet that threshold in any way. He suggested just identifying the property as agricultural revenue. **SENATOR GROSFIELD** replied that the different classifications of land could be considered, however it did not get at the problem. The bottom line is we are seeing a big change in Montana in ownership. The rest of the agricultural landowners are subsidizing a lifestyle that should not be subsidized, nor is it fair. **SENATOR COLE** pointed out the problem of leased lands that they did not come anywhere near the \$8 threshold. **SENATOR GROSFIELD** suggested coming up with an average lease rate that would be acceptable. He said he was trying to get at the issue. *{Tape : 1; Side : B; Approx. Time Counter : 24 - 25.9}*

SENATOR GLASER described the agricultural diversity. On a good year you don't get hail, you don't get grasshoppers. If you have the right number of cows it is a good year, maybe you would get \$100,000 dollars of production. He pointed out some land had grasshopper infestations for the past ten years. Those ranchers had been living off of hope, their savings and the banker for ten years. That situation just wouldn't work with the threshold example. They have one opportunity to survive - which is to take the land out of production during that period of time. If they do this, then all they have to do is pay their taxes and feed their family, rather than going backwards every year. The reality of agriculture needs to be in this bill. There is nobody that takes greater risks and has smaller rewards in this state than the dryland farmer with their short grass farms. The hail, the rain, the grasshoppers, the tax collector, the neighbors that don't want to produce, contribute and all add into this formula. There is huge diversity and huge risk. There must be extreme care given not to kill our friends when we are trying to get at folks in New York City. He suggested putting rancher members on the subcommittee who would understand the issue. **SENATOR GROSFIELD** replied that he agreed that people that were bonafide

agriculture should not be hurt. He said he was looking for a minimum threshold that would at least try to get at this issue.

SENATOR BOHLINGER felt this was an important policy issue that had to be addressed. He recommended rancher members work on this issue. *{Tape : 1; Side : B; Approx. Time Counter : 25.9 - 31.8}*

SENATOR ELLINGSON asked about the differences between class 4, which was taxed on the basis of market value, and agricultural property which is taxed on its productive value. He asked how much the taxes would go up if agricultural land was based on the market value rate. What percentage of market value would make ag land comparable to the current taxation rate? **Mr. Pearson** replied it was hard to estimate within the proposed legislation. The land would be valued at market and would be taxed at one quarter of class 4 rate. Using an example, if the average market value was \$2,000, the estimate might increase the tax by \$1 per acre. The vast majority of the properties fall into this category of the "green belt", and probably in the twenty to forty acre range - not the ten thousand acre places, which are the exceptions. *{Tape : 2; Side : A; Approx. Time Counter : 0 - 2.9}*

SENATOR ELLINGSON asked if the land is taken from agriculture and met the qualifications to be taxed at one quarter of the class four rate, would that be an increase on that property? **Mr.**

Pearson replied that in Eastern Montana it could mean an increase. However, if it was already in non-qualified ag it would be a decrease. Non qualified ag is \$3.5 to \$3.75 an acre.

SENATOR ELLINGSON asked if it was accurate to say that agricultural land was evaluated on market value rather than productive value you would pay about four times the taxes that you are paying now. **Mr. Pearson** said if you loose that agriculture eligibility you would pay more. **SENATOR ELLINGSON** noted that when a rich out of state person comes in and pursues their version of the "American Dream" and buys a ten thousand acre ranch and takes all the cattle off of it - how long would it take for the Department of Revenue to get around to realizing that this isn't agricultural land and start taxing it at a class 4 rate. **Mr. Pearson** said under current legislation, property over 160 acres of size is automatically valued as agriculture land, unless there are covenants or easements or some other administrative instrument that would preclude agricultural use. *{Tape : 2; Side : A; Approx. Time Counter : 2.9 - 6}*

SENATOR STONINGTON noted that the discussion was focused on the agricultural land, which was not the issue. The issue was around subdivided lands which are already subdivided into twenty or thirty acre parcels all over the state. This would hit these people very hard. She described friends of hers that both worked

full time, were native Montanans who purchased twenty acres and built a house. Their land is non-qualified ag. Their land is worth \$5,000 an acre, which is \$100,000. Under this bill, their land would now be worth - for tax purposes, \$1,500 an acre. Under non-qualified ag land, their land is worth \$8 an acre times 7 - so their land is worth \$56 an acre compared to \$1,500. She asked how this would affect her land in Bridger Canyon which was worth \$15,000 an acre and she paid non-qualified ag. If you divide \$15,000 by 4 it is \$3,750. **Mr. Pearson** said it would be better to take the market value and multiply by the number of acres and then remove the farmstead exemption that is applied to class four. **SENATOR STONINGTON** said to just calculate it on a per acre basis, \$15,000 value divided by four would be \$3,750 which would be a market value per acre, under this bill. Then you take that, for purposes of an example, times a 4% tax rate. This would be \$150 for that acre of land and then times 500 mill, for example, would be \$75. The homestead exemption would be for the one acre the home is on. The point is - the bill would represent a 5-7 thousand percent increase on this land. **SENATOR DEPRATU** commented that now they understood how the people on the lake felt. **SENATOR STONINGTON** replied this would affect thousands of people. *{Tape : 2; Side : A; Approx. Time Counter : 6 - 9.9}*

SENATOR ELLIS asked about the threshold in Eastern Montana. He said the threshold dollar increment should be \$5-6 dollars. He wanted a response to that. He asked about how the internal parcels should be addressed. **SENATOR GROSFIELD** agreed that the Department of Revenue should supply numbers that would reflect different areas. He agreed \$5-6 dollars or even \$4 would be fine. He just wanted the issue addressed. **SENATOR ELLIS** noted the smaller internal parcels, if not fenced-which most are not, they should be taxed like the surrounding parcels. **SENATOR GROSFIELD** said his intention was not to bump up the values. In 1993 the subdivision laws were changed to address the 160 acres. Before the effective date of that act, people went out and surveyed out some twenties so they could subdivide in the future without review. What has happened in some of those cases, that land has been sold. In other cases, that was all that ever happened. He noted it was not his intention to go into those twenty acres and bump them up, if they are still used in ag. This bill does not do that. As long as the land is still in ag, whether it is contiguous or not, and can meet some kind of test - it ought to get the class 3 taxation. He noted there would be a big impact to some land. People should not be taxed out of their homes, however, there should be an attempt to get at the bigger issue. *{Tape : 2; Side : A; Approx. Time Counter : 9.9 - 14.3}*

SENATOR ELLINGSON asked about raising the 1/4% to a higher rate. **SENATOR GROSFIELD** said that would be perceived as going way too far. His intention was not to do someone out of their "American Dream".

Closing by Sponsor: **SENATOR GROSFIELD** said the bill attempted to get at the issue. He did not intend to hit qualified agriculture hard. There was some good points raised. There will be other examples that need work, such as Dude Ranches. This bill would do significant things to some properties. If you look at Montana today versus Montana twenty to thirty years ago, it is a different Montana. It will continue in this manner and we need to be able to pay for local government services, not just on the backs of those people being left in ag. He encouraged serious consideration of the bill. **{Tape : 2; Side : A; Approx. Time Counter : 14.3 - 17.3}**

HEARING ON SENATE BILL 507

Sponsor: **SENATOR JIM ELLIOTT, SD 36, TROUT CREEK**

Proponents: Evan Barrett, Montana Economic Developers Association; Pat Melby

Opponents: Riley Johnson; Robert Ward, Enterprise Rent a Car; Candace Payne, Montana Car Rental Association; Mary Whittinghill, Montana Tax Payer's Association

Informational Witness: Andy Poole, Deputy Director Department of Commerce; Karl Kauffman, President and CEO of Wendt Kochman, marketing promotion contractor for business recruitment

Opening Statement by Sponsor: **SENATOR ELLIOTT** presented the bill. He discussed the promotion of businesses. He described reasons a business moved to Montana from the Bronx in New York. The reasons cited did not include taxes, nor the distance to markets. The most successful marketing plan in Montana is Travel Montana. This model should be used to promote business development in the state of Montana. Four things are needed to accomplish this. Market research and targeted promotion, which could be handled by private enterprise; an information clearing house, handled by state government; regional development and promotional centers, which would be non-profit, economic development centers; and a stable, dedicated, long-range funding source. The Department of Commerce and the Governor's Office will eventually clarify these needs. He said his main concern was rural economic development. **{Tape : 2; Side : A; Approx. Time Counter : 17.3 - 23.6}**

Proponents' Testimony: Evan Barrett, representing Montana Economic Development Association, spoke as a proponent. He said there was a need for business recruitment and promotion. The bill would provide adequate revenue and more resources to be able to carry our message beyond the state of Montana. **{Tape : 2; Side : A; Approx. Time Counter : 23.6 - 27.2}**

Pat Melby, representing himself, spoke in support of the bill, especially the first two sections. A stable source of funding is important for business promotion in the state. As a former member of the board of directors for the Helena Chamber of Commerce and current director of the Gateway Economic Development Corporation, he supported and saw the need for the bill. Promoting Montana as a place to locate and do business is important. He noticed the difficulty of the community in competing with other states, such as Spokane and Boise. Even an inquiry is difficult to pull together the resources to respond. A stable program used for promoting tourism in Montana would really assist all of the local communities to attract jobs. **{Tape : 2; Side : A; Approx. Time Counter : 27.2 - 29.6}**

Opponents' Testimony: Riley Johnson, representing Enterprise Car Rental Corporation, spoke about the effects of the source of funding for this type of program would have on the rental car industry. He pointed out the bed tax was the current source of funding for advertising and promotional programs. This bill would represent an extension of the tourism program. Every major airport in the state has airport fees and vehicle licensing fees. This bill would add to the cost of renting a car by 15-18% additional money. **{Tape : 2; Side : B; Approx. Time Counter : 0 - 3.8}**

Robert Ward, Vice President and General Manager of Enterprise Rent a Car, said it was unfair to target specific industries to pay for something that benefits the entire state. Programs designed to stimulate economic growth should be funded with broader based tax programs. There is a big mis-perception that out of state people will fund this tax. Three of every four rentals in Montana are to Montanans. The majority of rentals comes from the replacement of the corporate market. These are local Montana businesses. The replacement market consists of local dealerships, repair facilities and body shops. These replacement rentals happen when someone's car is in the shop due to service or breakdown or because of an accident. In many cases a dealership, repair facility or insurance company is paying for these rentals. This selective tax will cause an increase in rental costs for these Montana businesses and all Montana customers. The bill will also create costly problems on the compliance side. While it specifically excludes contracts for

insurance - what is that definition - is it when your car is in a wreck and the insurance company is paying for it - is it when the car breaks down and you have mechanical insurance protection - or is it when your car goes into the shop for a warranty issue? This lack of definition will clearly lead to confusion. Five percent of the tax collected goes to the operator as administrative allowance, but it will not come close to the costs of administering this program. He concluded this would be poor policy, as it is a selective tax on one industry to pay for public programs. **{Tape : 2; Side : B; Approx. Time Counter : 3.8 - 7.5}**

Candace Payne, representing the Montana Car Rental Association, opposed the bill. She felt it was inappropriate to tax one business. She noted that other states give 25% to administer the rental car tax.

Mary Whittinghill, Montana Taxpayer's Association, spoke as an opponent.

Informational Testimony: Andy Poole, Deputy Director to the Department of Commerce, described the business recruitment and promotion that was in place now. Active recruitment through marketing would be occurring very soon to sell companies into moving to Montana.

Karl Kauffman, President and CEO of Wendt Kochman, an advertising group, spoke about the business recruitment process. He distributed an *Overview of Marketing Projects in Process*.

EXHIBIT (tas68a01) He noted that Montana did not have a negative image, but rather no image at all, as far as a place to relocate. He talked about the benefits of the web site and distributed examples of advertising for the committee to see work in progress. **{Tape : 2; Side : B; Approx. Time Counter : 7.5 - 17}**

Questions from Committee Members and Responses: SENATOR

STONINGTON asked about the selective taxation issue. **SENATOR ELLIOTT** pointed out that piecemeal tax policy was what Montana did best. As business increases in Montana, the rental car business will increase as well.

Closing by Sponsor: SENATOR ELLIOTT closed. He noted the infrastructure was available but there was a need for a stable funding source.

HEARING ON SENATE BILL 511

Sponsor: SENATOR FRED THOMAS, SD 31, Missoula

Proponents: Jason Theilman, Secretary of State's Office; Dick Krofts, Commissioner of Higher Education; Erik Burke, MEA-MFT; Ellen Engstedt, Montana Wood Products Association; Dustin Stewert, ASMSU

Opponents: None

Opening Statement by Sponsor: SENATOR THOMAS presented the bill. The bill was a companion measure to SB 493 and SB 495. SB 493 would encourage investments with the Educational Trust Fund and the Coal Tax Trust Fund. SB 495 is a mechanism to utilize some of the revenues more immediately. This bill implements that same procedure for the university systems. ***{Tape : 3; Side : A; Approx. Time Counter : 0 - 7}***

Proponents' Testimony: Jason Theilman, Chief Deputy Secretary of State, discussed the bill. He presented a chart that outlined timber sale revenues. **EXHIBIT(tas68a02)** This bill would enable the same procedure to be used for higher education. He noted as they looked at the mineral royalty revenues, the concept of purchasing the mineral royalty revenue was to also disperse to schools and higher education, however, it was not too impressive as the revenues collected were insignificant. Significant advantages for higher education could be seen by taking 10% of the timber royalties and disperse them to schools. He referred to the chart that was put together by Department of Natural Resources. The funds generated from the timber sales would be made available for higher education institutions. On a biennial basis this would be \$1.6 million dollars that would be freed up to help higher education in the state of Montana.

EXHIBIT(tas68a03) {Tape : 3; Side : A; Approx. Time Counter : 7.4 - 11.1}

Dick Krofts, Commissioner of Higher Education, supported the bill. He noted this would accelerate money flowing to the university system. The money now goes to the trust. The income would be based on how much timber was sold in the future and at what price. This would accelerate revenue to the campuses. He clarified that the money garnered from the interest on the trusts currently are dollars that are pledged to pay off bonds. What ever the sum of money is, it would be continued to be used for those commitments. This bill would not be used for any operating expenses but to pay off debt. ***{Tape : 3; Side : A; Approx. Time Counter : 11.1 - 13.7}***

Erik Burke, representing MEA-MFT, supported the bill. He said this would directly benefit the university system and would provide money now rather than later.

Ellen Engstedt, representing the Montana Wood Products Association, said her members knew a lot about cutting trees and they were in support of maximum sustainable revenue derived from state trust lands to the benefit of school funding. She pointed out that timber was a renewable resource and through proper forest management, timber harvesting would continue to be an integral part of Montana school funding. It appears that timber income from designated state lands should go directly to the appropriate unit and should include the university system. **{Tape : 3; Side : A; Approx. Time Counter : 13.7 - 15.5}**

Dustin Stewert, representing the Associated Students of Montana State University of Bozeman, Great Falls and the University of Montana, testified in support of the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: **SENATOR ELLINGSON** asked for an explanation of the state trust fund proceeds and interest. **Jason Theilman** replied the revenues generated go to specific beneficiaries who have the trust lands. **Dick Krofts** discussed the chart. He said the numbers were averages and were hypothetical because they would vary depending on the future in terms of number of trees cut and money generated. **{Tape : 3; Side : A; Approx. Time Counter : 15.5 - 21.6}**

SENATOR COLE asked if this was the same process as K-12. **Mr. Theilman** replied the revenue generated from mineral royalties averaged \$23,000 a year over the last ten years, so taking money from the coal trust and dispersing that was not worth the revenue that could be generated. He explained the winners were the college students of Montana and those who wanted an educated work force. If the money had stayed in the trust land, there may be more money generated in the trust than there would be by making this dispersal. However, the intent of the Constitution and the enabling act was to distribute a large portion of those revenues on a regular basis. **{Tape : 3; Side : A; Approx. Time Counter : 22 - 24}**

SENATOR HARRINGTON asked about the money that was in the base currently used to pay off the bonds. **Mr. Krofts** said that interest from the trusts is part of the money that was pledged to pay off the bonds. This bill does not free up any money for the operations budget. These dollars would not be used for an ongoing operation. Whatever was not used for paying bonding requirements would be used in similar kinds of one time only expenditures, such as deferred maintenance. This money would not be applicable for the operating budgets. **{Tape : 3; Side : B; Approx. Time Counter : 0 - 5.1}**

SENATOR ELLIS questioned the figures on the timber income. **Terry Johnson**, from the Legislative Fiscal Division, replied there were 18 million board feet of timber earmarked for school technology. He noted that timber harvest revenue was volatile, where prices spiked and dipped, so the figures were varied. *{Tape : 3; Side : B; Approx. Time Counter : 5.1 - 11.6}*

Closing by Sponsor: **SENATOR THOMAS** closed.

HEARING ON SENATE BILL 513

Sponsor: **SENATOR JIM ELLIOTT**, SD 36, TROUT CREEK

Proponents: **Matthew Leo, Montana Public Research Group and Consumer Advocacy; Patrick Judge, MEIC;**

Opponents: **Jerome Anderson**

Opening Statement by Sponsor: **SENATOR ELLIOTT** presented the bill. He said this bill would address the excess profits tax on the sale of electrical generation in the state of Montana. He described the historical perspective which was during the Civil War when the state of Georgia began taxing profits of those manufacturing uniforms and articles of war. This was in response to the public outcry about profiteering. He described a list of taxes on excess profits, including the 1916 United States Revenue Act, a munitions tax. The excess profits tax was then turned into a war excess profits tax by the Revenue Act of October 1917 and the Revenue Act of February 1919. It came back in 1934 during a time of economic depression. In 1980, in the United States there was a Crude Oil Windfall Profits Tax enacted. The rationale for these taxes is significant. Then he read an article from 1934 that pertained to the situation in Montana today. "The title of the tax alone possesses a subtle allure. These days for a multitude of Americans, vast groups are smarting under the liveliest sense of social and economic injustice. On the one side, many business proprietors themselves for whom the existing economic attrition is meant largely curtailed returns or actual losses feel that a greater relative tax load could be shouldered by those who have been permitted through happier circumstances to maintain higher rates of earning. Agricultural interests and people not directly engaged as business proprietors, many of them bankrupted, unemployed or reduced in earning, the thought that some business undertakings are still yielding huge rates of return must be especially galling." **SENATOR ELLIOTT** argued that this very situation pertained today in the state of Montana with businesses laying off employees - at least over 1,000 now, perhaps over 2,000 with ancillary employment. Businesses closed,

communities suffering and the multiplier effect can be seen from wages, salaries and profits diminishing from the communities they represent. He highlighted the excess profits tax on electrical energy producers. **EXHIBIT(tas68a04)** He noted the bill would either lower prices voluntarily by electrical companies or allow the state to collect enough taxes to be able to lower prices. He pointed out there was one co-op that favored this measure because they felt it would lower the pressure on the price of the Bonneville Power Authority and thereby lower their costs.

Proponents' Testimony: **Matthew Leo**, representing the Montana Public Interest Research Group, spoke in favor of the bill. He said they believed this was a very important consumer bill. It will protect consumers from price gouging. The California crisis has shown the power companies making hefty profits. He cited a *Seattle Times* article that said while the DOW Jones Industrial Average fell 5% in the year 2000, power companies reported returns to investors by an increase of 60%. Dynergy saw their income triple to more than \$500 million dollars. Duke Energy saw their wholesale energy profits increase by 374% to \$744 million dollars. At the same time these companies are making huge profits, the distributors of the energy are reporting huge losses and talking about going bankrupt. This is not good for the distributors or the consumers that rely on them to supply their power. He pointed out that PPL, lacking competition in Montana, may even be in a better position than the companies in California to charge unjust and unreasonable prices. This bill would help this situation by discouraging profiteering by energy generators. It would prevent distributors from going bankrupt. Money that comes from the tax would help reduce the electric rate. **{Tape : 3; Side : B; Approx. Time Counter : 17 - 24}**

Patrick Judge, representing Montana Environmental Information Center, spoke positively about the bill. The problems in California with energy supply have been amplified in Montana. Though there are rate protections for small customers currently, PPL could increase these rates in the future. This bill would provide a remedy. It would discourage obscene profits and encourage renewable power and conservation. He noted that **Debby Smith** from the Rural to Northwest Project and Natural Resources Defense Council asked to be on record in support of that aspect of the bill. **{Tape : 3; Side : B; Approx. Time Counter : 24 - 26.5}**

Opponents' Testimony: **Jerome Anderson** read a statement from PPL Montana. They felt this bill would impose punitive and inappropriate taxes on generators, as outlined in his handout. **EXHIBIT(tas68a05)** **{Tape : 3; Side : B; Approx. Time Counter : 26.5 - 29.1}**

Questions from Committee Members and Responses: SENATOR ELLINGSON

asked if PPL could charge whatever the market would bear regardless of how high that price was and regardless of the impact on Montana's economy. **Mr. Anderson** replied that PPL sold 80% of their production to the Montana Power Company under the existing contract, which stays in existence through June 30, 2002. PPL Montana and the people in the state will all share in the market rate to come. There are occasions of excesses that have occurred in the past and certainly in the California area such excesses are continuing at the present time. He noted that the company had responded to the Montana Power Company RFP and had done so responsibly.

SENATOR ELLINGSON asked whether the price would be ten times the current price by the 2002 date and if PPL would then be taking advantage of those market forces. **Mr. Anderson** said he could not speak for the company regarding circumstances that may exist in the future. He reiterated that the responses made to the Montana Power company RFP had been done responsibly.

SENATOR STONINGTON asked if the Federal Regulatory Commission required PPL to sell energy to California and they were selling it at what that market was bearing, would they be responsible for the tax. **SENATOR ELLIOTT** replied that he could not imagine that the Federal Regulatory Commission would require PPL to sell all of the excess power to the state of California. There is a section in the bill that exempts the company from this tax if they sell out of the state of Montana on a 150% ratio on cost of sales. *{Tape : 4; Side : A; Approx. Time Counter : 0 - 4.2}*

Closing by Sponsor: **SENATOR ELLIOTT** closed. He noted that **Leo Giacometto**, from the Northwest Power Planning Council could not attend. He was an informational witness. **SENATOR ELLIOTT** handed out a list of profits of unregulated California generators that demonstrated profits and the percentage of increase.

EXHIBIT (tas68a06) This data came from the Wheeler Conference, handed out by the County Supervisor of San Diego County in order to show that there was excess profiteering and "robbery". This is a board of county supervisors that is entirely Republican, that has privatized industry right and left in the county of San Diego and now seem to disbelieve everything that the private generators are telling them and are planning to build their own power plants and their own distribution systems. They say that the tax is punitive. He noted that if PPL were asking a reasonable price for electricity in the state of Montana they would be exempt from this tax. They are sending chilling signals to the business community about doing business in Montana. He asked the committee what kind of signal electricity prices twenty times normal would do for anyone wanting to expand business or to

move a business to Montana. **{Tape : 4; Side : A; Approx. Time Counter : 4.2 -12.4}**

CHAIRMAN DEPRATU appointed **SENATORS GLASER, ELLIS AND STONINGTON** to a subcommittee for SB 513.

EXECUTIVE ACTION ON SENATE BILL 507

SENATOR ELLINGSON MOVED SB 507. He said he liked the idea of putting money into an organization that promoted Montana businesses and economic growth. **SENATOR EKEGREN** commented that the bill targeted one industry to tax. **SENATOR STONINGTON** pointed out the Governor's Office was eager to have the Office of Economic Development. She noted concerns about raiding research funds to fund that program. She felt this bill would be a more appropriate placement for economic development funds. A select tax on rental cars would be used largely by non-residents, since the residents are exempt if they are using a rental for insurance replacement purposes.

SENATOR DEPRATU suggested an amendment that would coordinate with the passage of the bed tax bill, so it would not be 9% and add 4% to it. He **MOVED** this as a conceptual amendment.

SENATOR HARRINGTON noted there was a need for money for education. **Mr. Heiman** pointed out this bill was a referendum and it would be known if the other bill passed before this went to the ballot. **SENATOR GLASER** commented that he would not support the bill, as it was not his highest priority.

The question was called on the amendment. The amendment **PASSED** unanimously.

SENATOR ELLINGSON MOVED THE BILL AS AMENDED. The question was called. The motion **PASSED** will **SENATORS GLASER, EKEGREN, COLE AND ELLIS** voting No.

EXECUTIVE ACTION ON SENATE BILL 511

SENATOR EKEGREN MOVED THE BILL AND THE AMENDMENT. The question was called on the amendment. The amendment was **ADOPTED** unanimously.

SENATOR STONINGTON noted that section 5 was all that was left in the bill. She pointed out this bill now says the money straight

off the timber sales go to the units of the university system. There is a provision that says 5% of those sales would continue going into the trust fund. **Mr. Heiman** suggested this could be amended in on page 2, line 27 - could say 5% interest and income annually credited to the appropriate fund including the public school fund. **SENATOR ELLINGSON** clarified the 5% income was supposed to go back to the trust fund. *{Tape : 4; Side : A; Approx. Time Counter : 10.6 - 29}*

Jason Theilman clarified that 95% of all earnings, interest income and other revenues generated from state lands would be distributed to the beneficiaries and 5% would go back to the trust.

SENATOR STONINGTON MOVED TO AMEND THE BILL. She said she wanted to make sure there was a 5% reinvestment clause. If all the money was taken directly from the timber sales, at least 5% of that would go into the permanent trust. The question was called on the amendment. The amendment was **ADOPTED** unanimously.

SENATOR EKEGREN MOVED THE BILL AS AMENDED. The question was called. The motion **PASSED** 7-1 with **SENATOR HARRINGTON** voting no and **SENATOR BOHLINGER** being absent.

Terry Johnson with the Legislative Fiscal Division presented current information about the telecommunications tax. He described the anticipated revenue and the effect of various legislation on the tax. Revenue neutrality was difficult to achieve. Issues such as the changes in the telecommunications from class 9 into a new class 13 needed to be considered. That rate went from 12% to 6%. In addition to that, there was a corresponding adjustment that had to be made to class 12, airlines and railroad property. That particular rate also went down. The third one was moving some of the property in class 7 to class 5 and that rate eventually ended up at a 3% rate. All three of those factors need to be considered when discussing revenue neutrality. He pointed out HB 128 changed the property tax and created the telecommunications tax. Additionally, SB 172 allowed infrastructure credits. This bill should be looked at to make sure it is taken out of the neutrality issue. SB 111 addressed intangible property, which has a significant impact on property tax side. The fourth bill is SB 184. That legislation had the option for locals to float mills. The question is what does that do to the property taxes paid by the telecommunications industry. He said it appeared that local government received a windfall. The property tax paid by the industry in 2001, is more than the anticipated loss in HB 128. The local governments received the additional property taxes from the higher taxable

value base on telecommunications, and also received a state reimbursement for the whole amount of the loss that was anticipated two years ago. The local governments got the windfall, the state was left holding the bag. Finally, in terms of calculating revenue neutrality, the Department of Revenue has put a lot of effort into the work, however the estimates show fiscal year 2001 - showed a fiscal year 2000 delayed payment. This is revenue that did not show up until 2001 that really belonged to fiscal year 2000. That number needs to be excluded from the calculations before calculating any revenue neutrality. He suggested reinstating the old telephone excise tax as it would have been money ahead. **{Tape : 4; Side : B; Approx. Time Counter : 0 - 15}**

ADJOURNMENT

Adjournment: 11:58 A.M.

SEN. BOB DEPRATU, Chairman

DEB THOMPSON, Secretary

BD/DT

EXHIBIT (tas68aad)